



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/909,460	07/18/2001	Lynn B. Lunsford	08191-014002	1198

26161 7590 12/11/2003

FISH & RICHARDSON PC
225 FRANKLIN ST
BOSTON, MA 02110

EXAMINER

NGUYEN, DAVE TRONG

ART UNIT PAPER NUMBER

1632

DATE MAILED: 12/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Claims 1, 8, 24, 25, 27, 29, 34, 35, and 51 have been amended, claims 52-80 have been added by the amendment filed on July 30, 2003.

Newly submitted and amended claim 1, 8, 24, 25, 27, 29, 34, 35, 51, 52, and claims dependent there from are now directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Originally filed claims as now being canceled were directed to a microparticle less than about 20 microns in diameter, and is not encapsulated in a liposome and does not comprise a cell. However, currently pending claims are now directed to a microparticle less than about 20 microns in diameters, which microparticle is no longer restricted to the limitation of "not being encapsulated in a liposome and does not comprise a cell". In fact, the claimed invention as amended now is directed to microparticles less than about 20 microns in diameter, which microparticle does not comprise a liposome and a cell. As such, the microparticle as presently claimed is not the same invention as originally filed, particularly since the presently claimed invention is not required to be un-encapsulated in a liposome. In fact, the phrase "the microparticle is not encapsulated in a liposome" is neither the same nor equivalent to the phrase "the microparticle does not comprise a liposome". For example, the latter phrase can be reasonably interpreted by a skilled artisan as embracing liposomal carriers comprising a microparticle of less than about 20 microns in diameter, wherein the microparticle does not comprise a cell and a liposome. However, the previously

Art Unit: 1632

claimed invention as originally filed clearly limits the claimed microparticles to those, which are not encapsulated at all by a liposome. All previous prior art rejections have been focused on the limitation of "not being encapsulated in a liposome and does not comprise a cell". None of the presently pending claims recite such limitation.

Applicant is suggested to amend the claimed invention to include the phrase "the microparticle is not encapsulated in a liposome". However, applicant is also advised that support for the amendment for any claim when read as a whole must be found from the as-filed application.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, all pending claims are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Therefore, the amendment filed on July 30, 2003 canceling all claims drawn to the elected invention and presenting only claims drawn to a non-elected invention is non-responsive (MPEP § 821.03). The remaining claims are not readable on the invention previously under examination because of the reasons set forth in the preceding paragraphs.

Since the above-mentioned amendment appears to be a bona fide attempt to reply, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the

Art Unit: 1632

omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner *Dave Nguyen* whose telephone number is **(703) 305-2024**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, *Deborah Reynolds*, may be reached at **(703) 305-4051**.

Papers related to this application may be submitted to Group 1600 by facsimile transmission. Papers should be faxed to Group 1600 via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The official fax number as of August 4, 2003 is **703-872-9106**.

Any inquiry of a general nature or relating to the status of this application should be directed to the *Group receptionist* whose telephone number is **(703) 308-0196**.

Dave Trong Nguyen
Primary Examiner
Art Unit: 1632



DAVE T. NGUYEN
PRIMARY EXAMINER